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No. 37

IN THE

Supreme Court of the United States

OCTOBER TERM, 1953

MARION L. HOLLAND and ETHEL E. HOLLAND,
Petitioners

v.

UNITED STATES OF AMERICA

On Petition For a Writ of Certiorari to the United States Court of Appeals for the Tenth Circuit

REPLY BRIEF FOR THE PETITIONERS

PEYTON FORD
SUMNER M. REDSTONE
Attorneys for Petitioners

FORD, BERGSON, ADAMS, BORKLAND & REDSTONE
918 Sixteenth Street, N. W.
Washington, D. C.

ANTHONY F. ZARLENGO
505 Symes Building
Denver, Colorado

H. D. REED
FRANK A. BRUNO
515 Majestic Building
Denver, Colorado
Of Counsel

PRESS OF BYRON S. ADAMS, WASHINGTON, D. C.

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Supreme Court of the United States

OCTOBER TERM, 1953

No. 650

MARION L. HOLLAND and ETHEL E. HOLLAND,
Petitioners

v.

UNITED STATES OF AMERICA

On Petition For a Writ of Certiorari to the United States Court of Appeals for the Tenth Circuit

REPLY BRIEF FOR THE PETITIONERS

This Reply Brief is filed for the limited purpose of directing this Court's attention to certain factual matters set forth in the Brief for the United States in Opposition.

In their Petition for Certiorari Petitioners, in treating upon the first question, gave emphasis to two critical deficiencies in the net worth starting point upon which the

Government relied, and argued, among other things, that the decision below was thereby in conflict with decisions of other Courts of Appeals. (Pet. 14-18.) The first deficiency related to the critical currency item, the existence or non-existence of which was admitted to be a matter of doubt by the Government's chief witness. (Pet. 14.) In its Brief in Opposition the Government does not allude to this testimony of the Special Agent relied upon by the Petitioners. The second deficiency related to the hundreds and perhaps thousands of shares of stock which were shown by Government witnesses to have been in existence on or before the net worth starting point date and which were not taken into consideration or accounted for by the Government in its net worth computations. (Pet. 15-16.) The Court of Appeals attempted to meet this objection by speculating as to the probabilities of subsequent retention or disposition of the stock. The Government, in its Brief in Opposition, attempts to meet this deficiency by stating that "Mr. Holland told the agents that he sold all his securities . . . before he purchased the hotel in April 1946." (Brief in Opposition 8.) The aforementioned assertion is based upon the testimony of the Government Agents, which is in turn based upon the sworn statement made to the Agents by the Petitioner Marion L. Holland. The question and answer, as set forth in that statement, are as follows: (R. 302)

> "38. Q. Were all of your securities sold at the time you purchased the hotel, or prior to the time you purchased the hotel? A. Yes. *I'd like to correct that to I don't know. I'm not sure.*"

The Petitioners also stated in their Petition that the Government did not even take into consideration 300 shares of stock which were owned by the Petitioners as of July 29, 1948. (Pet. 15.) In its Brief in Opposition the Government has stated that the record reference to stocks held until July 29, 1948 "is clearly a mistake for 'July 29,

1938'." (Brief in Opposition 8.) The record itself is clear to the effect that the date is July 29, 1948 (R. 141) and counsel are informed that the testimony was in fact July 29, 1948. Notwithstanding this, and notwithstanding the relative unimportance of the factual statement, counsel for Petitioners, upon receipt of the Brief in Opposition, caused an independent investigation to be made outside the record to determine the true facts; and on the basis of this investigation have concluded that the date should have been July 29, 1938.[1] In view of the relative unimportance of this factual question counsel for the Petitioners would not have dwelt upon this matter in a Reply Brief except for their desire fully to discharge their obligation to the Court.

Respectfully submitted,

PEYTON FORD
SUMNER M. REDSTONE
Attorneys for Petitioners

FORD, BERGSON, ADAMS, BORKLAND & REDSTONE
918 Sixteenth Street, N. W.
Washington, D. C.

ANTHONY F. ZARLENGO
505 Symes Building
Denver, Colorado

H. D. REED
FRANK A. BRUNO
515 Majestic Building
Denver, Colorado
Of Counsel

[1] So far as counsel for Petitioners are aware the Government has never until the Brief in Opposition previously attempted to modify or discredit this testimony of their witness.